IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 259 of 1995
In
COMPANY PETITION No. 18 of 1978
In
COMPANY APPLICATION No. 2003 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAMPAKLAL THAKORDAS BHOGAWALA & 1 - Applicant(s)
Versus
DIVYA VASUNDHARA FINANCIERS PVT.LTD. - Respondent(s)

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Appearance :
MR CJ VIN for Applicant(s) : 1 - 2.
MR BR SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 28/11/2006

ORAL JUDGMENT

1. By way of this Judge's Summons, the petitioners have prayed for an appropriate order to direct that the remaining land which forms part and parcel of Survey No.395 and which is not conveyed to the petitioner by the conveyance

deed and standing in the possession of the Divya Vasundhara Financiers Limited be conveyed to the petitioners.

2. It is the case on behalf of the petitioners that the entire parcel of land bearing Survey No. 395 admeasuring 25090.59 sq mts i.e. 30008 sq yds situated at Divya Vasundhara Industrial Estate, Katargam, was to be conveyed for a sale consideration of Rs. 36 Lacs as observed by the learned Single Judge of this Court in its order dated 8th October, 1990 passed in Company Application No. 96 of 1980 and though the petitioners have paid the entire sale consideration of Rs. 36 Lacs when the sale deed was executed, the same was executed only for 21220 sq mts of land and therefore, the petitioners have preferred the present application for the aforesaid reliefs.

3. Shri Vin, learned advocate appearing on behalf of the petitioners has submitted that when the sale consideration of Rs. 36 Lacs was paid for

25090.59 sq mts of land, the respondents were required to execute the sale deed for 25090.59 sq mts of land and instead of that the sale deed has been executed for 21220 sq mts of land only and therefore, it is requested to direct the respondents to execute the sale deed for the remaining land.

4. An affidavit-in-reply is filed on behalf of the respondent. It is submitted that on implementation of the Town Planning Scheme No.4 (Ashwanikumar – Navagam Surat), Original Survey No.395 has been converted into Final Plot No.84-B and against the holding of 25091 sq mts of land, only 21220 sq mts of land has been allotted and the rest of the land has gone under the compulsory deduction under the Town Planning Scheme. It is submitted that when the respondents were having only 21220 sq mts of land, the sale-deed was executed for the said land as the remaining land is never with the respondents. It is also further submitted that the present application is required to be

dismissed on the ground of delay and laches as in 1989 the sale deed was executed for 21220 sq mts of land and still the present Company Application is filed in the year 1999.

5. At this stage, Shri Vin, learned advocate appearing for the petitioners has submitted that if for some reasons the respondents were not in a position to convey the sale deed for the entire land i.e. 25091 sq mts of land, then in that case, when the petitioners have paid the sale consideration for 25091 sq mats of land, the respondents were required to refund and/or returned the amount for the balance area for which the sale-deed has not been executed.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is required to be noted that the sale deed was executed in the year 1982 by which 21220 sq mts of land was convened and the sale deed was executed for the said land. So in the year 1982

itself the petitioners were aware that the sale deed has been convened for lesser area still nothing was done by the petitioners still 1995 and in the year 1995 i.e. after approximately 13 years, the present application has been filed making a grievance and with a prayer that the respondents be directed to convene the sale deed for the balance land. The respondents are justified in making the grievance that the present application is required to be dismissed on the ground of delay and laches. It is also true that when the sale consideration of Rs. 36 Lacs was fixed by this Court pursuant to the order dated 8th October, 1980 the measurement of the land was considered as 25091 sq mts and on that basis the sale consideration was fixed. However, due to subsequent development and on implementation of the T.P. Scheme No.4, the area of the land was reduced and therefore, the respondent company executed sale deed for the land which was allotted to them in lieu of Revenue Survey No. 395. There can be justification on the part of the petitioners in

claiming the amount for the balance area, however, in view of the fact that there is delay and laches as well as there is no prayer in the application, such a prayer cannot be granted. However, if the petitioners are of the opinion that still they can get the said amount, it will be open for them to pray for the same by initiating appropriate legal proceedings before the appropriate forum and as and when such a proceedings are initiated, the same can be decided in accordance with law and on merits. However, it is observed that this Court has not expressed any opinion in favour of either parties for the same.

8. With these, the present application is dismissed.

[M.R.SHAH, J.]

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